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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation; ORACLE AMERICA, INC., a Delaware corporation; and ORACLE INTERNATIONAL CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation; and SETH RAVIN, an individual,

Defendants.

Case No. 2:10-cv-0106-LRH-PAL

ORACLE'S OPPOSITION TO DEFENDANTS' MOTION TO COMPEL DISCOVERY RELATING TO ORACLE'S MOTION FOR ATTORNEYS' FEES

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I. INTRODUCTION

After succeeding on its copyright and computer access claims and winning a $50 million dollar jury verdict against Rimini Street, Inc. and Seth Ravin (together, "Rimini"), Oracle filed a motion to recover its costs and attorneys' fees. In support of this motion, Oracle filed thousands of pages of billing records and four sworn declarations. Under federal and state law, Oracle is entitled to recover its fees and costs after spending nearly six years and tens of millions of dollars litigating against Rimini's needlessly costly litigation tactics. Those same wasteful tactics continue to this day as Rimini seeks to turn a fee request into its own mini-trial that will continue to draw this case out for months to come and consume even more resources of the Court and the parties. For example, Rimini has enlisted *five* purported experts on attorneys' fees (Dkt. 943, ¶ 3), more experts than Rimini used throughout the entire litigation up to this point.

Despite Oracle's compliance with the local rules on fee requests and the vast amount of supporting evidence it provided with its motion, Rimini seeks burdensome and invasive discovery with no precedent in the case law. Rimini even seeks *metadata* underlying Oracle's attorneys' time entry software and the depositions of at least three attorneys representing Oracle. All of this information is either redundant to the thousands of pages of documents Oracle has already produced, or it is irrelevant and unnecessary in determining the reasonableness of the fees at issue – fees that Oracle reviewed and paid throughout the years in this litigation.

Rimini ignores an extensive body of Ninth Circuit case law that disfavors post-trial discovery concerning fees, prohibits depositions and permits fee-related discovery only where the prevailing party's supporting documentation is found to be wanting. Rimini has failed to identify a single case allowing the discovery it seeks in a fee request proceeding, instead citing one inapposite case after another. Rimini has not even attempted to show that Oracle's documentation is somehow legally inadequate, nor can it do so credibly.

In reality, Rimini is attempting to continue delaying entry of final judgment in this litigation while trying to obtain sweeping discovery that is unnecessary in light of Oracle's production of voluminous and detailed billing records. The Court's familiarity with this litigation combined with the exhaustive time details already provided allow the Court to evaluate the reasonableness of Oracle's

efforts in this matter. Rimini's motion to compel should be denied.[1]

II. ARGUMENT

A. No Discovery is Warranted in This Case Beyond What Oracle Has Already Provided.

The Supreme Court has admonished litigants and courts that fee proceedings should not "result in a second major litigation." *Hensley v. Eckerbhart*, 461 U.S. 424, 437 (1983); *see City of Burlington v. Dague*, 505 U.S. 557, 566 (1992) (courts have an interest "in avoiding burdensome satellite litigation" relating to fee petitions). The Ninth Circuit has heeded this guidance. *See Crawford v. Astrue*, 586 F.3d 1142, 1152 (9th Cir. 2009) ("'satellite litigation' over attorneys' fees should not be encouraged") (citing *Gisbrecht v. Barnhart*, 535 U.S. 789, 808 (2002)). The Supreme Court recently reaffirmed this principle in *Fox v. Vice*, 131 S. Ct. 2205, 2216 (2011), stating that a fee applicant must "submit appropriate documentation to meet the burden of establishing entitlement to an award," but that "trial courts need not, and indeed *should not*, become green-eyeshade accountants. *The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection.* So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time." (emphasis supplied). The District of Nevada has consistently adhered to this approach. *Holhbein v. Utah Land Res. LLC*, No. 3:08-CV-00347-RCJ, 2015 WL 1413503, at *4 (D. Nev. Mar. 27, 2015) (quoting *Hensley* and *Fox* for the above proposition); *Barnard v. Las Vegas Metro. Police Dep't*, No. 2:03-CV-01524-RCJ, 2013 WL 4039067, at *2-3 (D. Nev. Aug. 7, 2013) (same).

Consistent with the Supreme Court's guidance, discovery pertaining to fee petitions is appropriate only on "rare occasion." Fed. R. Civ. P. 54, Advisory Comm. Note; *see also In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 303 (1st Cir. 1995) ("unlimited adversarial discovery is not a necessary—or even a usual—concomitant of fee disputes. . . . The Due Process Clause does not require freewheeling adversarial discovery as standard equipment in fee contests"). This Court is "well within its discretion to deny discovery in

[1] All references to Rimini Street, Inc.'s And Seth Ravin's Motion To Compel Discovery Relating to Oracle's Motion for Attorney's Fees (Dkt. 930) are cited as "Mot." below.

fee disputes that would lead to wasteful and time-consuming satellite litigation." *Muniz v. United Parcel Service, Inc.*, No. C-09-01987-CW, 2011 WL 311374, at *3 (N.D. Cal. Jan. 28, 2011) (internal quotations omitted).

Courts in the Ninth Circuit have refused to permit fee discovery unless it will be of "substantial assistance" to the court in evaluating the reasonableness of fees. *E.E.O.C. v. Harris Farms, Inc.*, No. Civ. F 02-6199 AWI LJO, 2006 WL 1028755, at *24-25 (E.D. Cal. Mar. 1, 2006) (denying losing defendant's request for fee-related discovery after trial because additional discovery would not be of "substantial assistance" where prevailing plaintiff submitted declarations and detailed billing records). The District of Oregon has noted that it is "not aware of any authority that provides for discovery regarding attorneys' fees *where the supporting documentation is not inadequate*." *Prison Legal News v. Umatilla County*, No. 2:12-cv-1101-SU, 2013 WL 2156471, at *4 (D. Or. May 16, 2013) (emphasis added) (*citing Sablan v. Dep't of Fin. of the Commonwealth of N. Mariana Islands*, 856 F.2d 1317, 1321-22 (9th Cir. 1988) (evidentiary hearings in fee proceedings are unnecessary "if the record and supporting affidavits are sufficiently detailed to provide an adequate basis for calculating an award")).

Furthermore, on the rare occasion that a court does allow fee-related discovery, it typically compels production of detailed billing entries—discovery that Oracle has already supplied in connection with its request for attorneys' fees. *E.g.*, *Entertainment Research Grp., Inc. v. Genesis Creative Grp.*, Inc., 122 F.3d 1211, 1231-32 (9th Cir. 1997) (requiring additional discovery where only summaries of time worked were provided); *Intel Corp. v. Terabyte Int'l, Inc.*, 6 F.3d 614, 622-23 (9th Cir. 1993) (same).

Rimini ignores this black-letter law and instead cites irrelevant authority or mischaracterizes the law. Rimini argues that: (1) an award of attorneys' fees must be based on adequate evidence; and (2) the Court has broad discretion to order discovery. Mot. at 2-3. Oracle does not dispute the first proposition, and submits that it has already produced adequate evidence. As to the Court's broad discretion, case law holds that fee discovery should be denied when the fee motion provides adequate evidence to support the fee request. Rimini cites *Moore v. James H. Matthews & Co.*, 682 F.2d 830, 838 (9th Cir. 1982) and *Frank Music Corp. v. Metro-Goldwyn-*

Mayer Inc., 886 F.2d 1545, 1556-1558 (9th Cir. 1989) for support. But both cases stand for the proposition that additional evidence is unnecessary "when the affidavits and briefs submitted by the parties are sufficiently detailed to provide a basis for the award." *Moore*, 682 F.2d at 838; *see also Frank Music Corp.*, 886 F.2d at 1556-1558 (fees award remanded because the district court had relied on "reconstructed records" and estimated hours). Here, Oracle's detailed invoices and declarations in support of its motion for fees (*see* Dkts. 918- 925.) comply with Local Rule 54-16, which sets out the requirements for fee requests, and Oracle's disclosures provide the Court with sufficient evidentiary basis to assess the fees requested.

Rimini cites no case holding that the detailed invoices tracking each attorney's time and the declarations substantiating each attorney's hourly rate that Oracle disclosed in support of its fee request are insufficient. The case law Rimini cites instead cautions the Court that discovery should be limited, if needed at all. *Goehring v. Brophy*, 94 F.3d 1294, 1305 (9th Cir. 1996) (denying request for additional discovery related to attorney's fees); *Nat'l Ass'n of Concerned Veterans v. Sec'y of Def.*, 675 F.2d 1319, 1329-30 (D.C. Cir. 1982) ("it is not expected that fee contests should be resolved only after the type of searching discovery that is typical where issues on the merits are presented."); *Muniz*, 2011 WL 311374, at *3 ("discovery in the context of post-trial fee disputes should not involve 'the type of searching discovery that is typical' in resolving the merits of a case") (citing *Nat'l Ass'n of Concerned Veterans*, 675 F.2d at 1329-30). Further, Rimini cites *Real v. Continental Group., Inc*., 116 F.R.D. 211 (N.D. Cal. 1986), which merely holds that a party's hours and rates (already provided here) are relevant to a fee request.

B. Rimini's Discovery Requests Are Irrelevant and Excessive.

As explained above, there is no reason for the Court to allow discovery beyond the evidence that Oracle has already disclosed in support of its fee request. This conclusion is further supported by looking at the specific discovery requests that Rimini makes. Under the guise of a request for "limited discovery" Rimini seeks four categories of discovery: (1) the retainer agreements between Oracle and its counsel; (2) guidelines that Oracle imposes on outside counsel; (3) metadata regarding the entry of time into Oracle's counsel's timekeeping software for the invoices submitted; and (4) depositions of the persons most knowledgeable about the fees incurred. Each request is unnecessary, irrelevant, and

redundant given what Oracle has already disclosed, and Rimini provides no basis for the Court to compel Oracle to produce any of the requested discovery.

1. The Fee Agreements That Rimini Requests Are Irrelevant.

Rimini seeks Oracle's fee agreements with its attorneys on the purported grounds that it will help to determine (1) the reasonableness of Oracle attorneys' billing rates and (2) whether Oracle seeks fees based on the hourly rates that Oracle agreed to pay. Mot. at 4:4-14. However, in compliance with the local rules and the relevant legal standards, Oracle has already provided all the information necessary to make these determinations.

a. Oracle already produced all the information that is necessary to determine the reasonableness of the fees.

As explained in detail in Oracle's Motion for Costs and Attorneys' Fees, to determine a reasonable attorneys' fee award, the Court multiplies the number of hours reasonably expended by a reasonable hourly rate. Dkt. 922 (Mot. for Costs and Atty's' Fees) at 16-22. Oracle has produced thousands of pages of invoices describing in detail all of the work performed by its attorneys on this case for which Oracle seeks to recover fees along with the hourly rates charged to Oracle. Dkt. 923 (Hixson Decl.), Exs. 3-9; Dkt. 924 (Ringgenberg Decl.), Exs. 3-8.[2] Oracle has also disclosed all of the downward adjustments it made to the hours actually spent to ensure its attorneys' fees request was conservative. Dkt. 922 at 21:18-22:5. Rimini has more information than Oracle is required to disclose, and far more than it needs to challenge the reasonableness of the hours worked by analyzing the narrative work descriptions and reductions to hours in the invoices that Oracle has already disclosed.

Oracle has also disclosed the relevant legal experience and hourly rates actually charged to Oracle for each of the attorneys for which it seeks fees. Hixson Decl., ¶¶ 31-96; Ringgenberg Decl., ¶¶ 14-41. Beyond that basic information, the determination of reasonableness of the rates is made by the Court based on analysis of the relevant market rates. Oracle's fee agreements play no

[2] All further references to the Hixson Decl. or Ringgenberg Decl. are cites to either Dkt. 923 or Dkt. 924, respectively.

part in the analysis.[3]

b. Oracle already produced all the evidence necessary to show that Oracle paid the fees at the agreed-upon rates.

Oracle has disclosed the invoices it received from its attorneys, Hixson Decl., Exs. 3-9; Ringgenberg Decl., Exs. 3-8, the rates it was charged for those attorneys and any applicable discounts (Hixson Decl., ¶¶ 10, 30-96; Ringgenberg Decl.,¶¶ 10, 14-41), and it has provided sworn declarations stating that it reviewed the bills for accuracy and reasonableness (Dkt. 925 (Maroulis Decl.), ¶ 3-4) and paid the amounts it is requesting in attorneys' fees (Hixson Decl., ¶ 8; Ringgenberg Decl., ¶ 8). The fee agreements that Rimini requests will provide no additional relevant information on this issue.

c. Rimini does not cite a single case that supports its argument.

In support of its request for Oracle's fee agreements, Rimini seems to cite every case it could find where the court ordered production of a fee agreement, even though not one of the cases it cites is relevant here. Rimini cites *Blanchard v. Bergeron*, 489 U.S. 87, 93 (1989), *Hamner v. Rios*, 769 F.2d 1404, 1407 (9th Cir. 1985), and *Kilopass Tech., Inc. v. Sidense Corp.*, 82 F. Supp. 3d 1154, 1167 (N.D. Cal. 2015), for the proposition that fee agreements are discoverable. But each of those cases is about the discoverability of a *contingency fee agreement* where the specifics of the contingency fee arrangement were the only way to know what the litigant had agreed to pay his attorneys – a factor in determining what a reasonable rate is. Oracle paid its attorneys based on an hourly rate; it did not have a contingency fee agreement with any of its attorneys on this case. Hixson Decl., ¶8; Ringgenberg Decl., ¶8. Oracle's motion disclosed exactly what Oracle agreed to and did pay for the attorneys working on this case. Hixson Decl., ¶¶ 30-96 and Exs. 3-9; Ringgenberg Decl., ¶¶ 14-41 and Exs. 3-8.[4]

[3] Rimini cites *Torres v. Toback, Bernstein, & Reiss LLP*, 278 F.R.D. 321, 322 (E.D.N.Y. 2012), and *In re Michaelson*, 511 F.2d 882, 888 (9th Cir. 1975), in support of its argument that disclosure of a fee agreement would protect against an unreasonable attorneys' fee award. But neither of these cases have any bearing on the argument, since they do not even mention a motion for attorneys' fees.

[4] Rimini also cites *FirstNet Ins. Co. v. Zhen Rui Brother Corp.*, No. 1:11-CV-00005, 2011 WL 8034171 (D.N. Mar. I. Oct. 24. 2011), which involved a discovery request for a contingency fee agreement served before the end of fact discovery. In this case, Oracle disclosed in its complaint that it intended to seek attorneys' fees (Dkt. 146 (Sec. Amend. Compl.), ¶¶ 99. 108, 158, Prayer for

Rimini also notes that *other jurisdictions* require disclosure of a fee agreement when requesting attorneys' fees. Mot. at 4:24-5:2. That may be, but the District of Nevada has no such requirement. LR 54-16.

The cases Rimini cites are completely inapposite. It cites no authority that could support its claim that Oracle must produce its fee agreements with its attorneys to enable Rimini to evaluate Oracle's fees request when Oracle has already turned over all the documents relevant to that evaluation.

2. The Billing Guidelines Rimini Requests Are Unnecessary and Irrelevant.

Rimini is correct that the local rules require an application for attorneys' fees to include a summary of the "customary fee" and "the time limitations imposed by the client." LR 54-16(b)(3)(F), (H); Mot. at 5:26-6:1. And Oracle has diligently provided this information in compliance with LR 54-16. *See* Hixson Decl., ¶¶ 8-14; Ringgenberg Decl., ¶¶ 8-10. Even though Oracle has satisfied the legal requirements by providing the necessary information, Rimini still seeks the same information in the form of Oracle's billing guidelines provided to its attorneys. This is redundant and irrelevant. Beyond the information required by LR 54-16, Rimini is not entitled to any of the information it seeks in the form of "billing guidelines."

Understandably, Rimini can offer no support for its request. The cases that Rimini cites are inapplicable to the issue at hand. *Dynamic Concepts, Inc. v. Truck Ins. Exchange*, 61 Cal. App. 4th 999, 1009 n.9 (1998), merely states what information billing guidelines might contain. Rimini cites one unpublished case, *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Seagate Tech., Inc.*, 2013 WL 3187318, at *8 (N.D. Cal. June 21, 2013), to support its claim that billing guidelines are "commonly considered" in determining the reasonableness of a fee request. Rimini inaccurately summarizes the case as holding that billing guidelines are "relevant to reasonableness of fees." Mot. at 5:19-22. But the word "relevant" does not appear once in the entire opinion, which is not

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Relief), but fact discovery closed in December 2011 (Dkt. 161(Scheduling Order)), and Rimini failed to request anything related to a fee agreement. Thus, in addition to *FirstNet* being irrelevant because it is a contingency fee case, this case also shows that Rimini's request is untimely.

about determining the reasonableness of a fee request at all and has no bearing on the issue here.[5]

3. Oracle Has Provided Contemporaneous Billing Records; Additional Metadata Is Irrelevant.

Oracle has produced charts summarizing what it paid for attorneys, experts, and other litigation expenses (Hixson Decl., Exs. 1 & 2; Ringgenberg Decl., Exs. 1 & 2); thousands of pages of the actual monthly invoices supporting each claimed amount (Hixson Decl., Exs. 3-9; Ringgenberg Decl., Exs. 3-8.); the billing rates for each timekeeper at all relevant times (Hixson Decl., ¶¶ 30-96; Ringgenberg Decl., ¶¶ 14-41); and sworn declarations attesting to the fact that attorneys on this matter tracked their time worked on the case by the day to the nearest tenth of an hour (Hixson Decl., ¶ 15; Ringgenberg Decl., ¶ 12). Oracle has more than satisfied its evidentiary burden. Oracle has also fully complied with Local Rule 54-16 which sets forth the required information in a motion for attorneys' fees.

Not satisfied with a description of Oracle's attorneys' activities over the last six years broken down in six-minute intervals, Rimini asks this Court to compel Oracle to produce the *metadata* underlying its attorneys' time entries in the time entry software. Apparently Rimini's intention is to have one of its five attorneys' fees experts analyze the metadata for many thousands of individual time entries in the hope that some entries were created weeks after the recorded activity. Rimini and its experts will then ask this Court to conclude that this indicates that certain instances of recorded time are inaccurate and/or inflated. Oracle would respond with further evidence to rebut these opinions, and before long the Court will be doing the work of "green-eyeshade accountants" proscribed by the Supreme Court in attorneys' fee proceedings. *See Fox v. Vice*, 131 S. Ct. at 2216.

At most, the law requires Oracle to provide contemporaneous billing records, and it has

[5] *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.* discusses billing guidelines because the insurer-defendant relied on extra-contractual billing guidelines to limit coverage of the insured-plaintiff's defense fees in the underlying lawsuit. Rimini cites another insurance coverage case, *Ins. Co. of State of Penn. v. City of San Diego*, 2007 WL 935712 (S.D. Cal. Feb. 27, 2007), in support of its claim that billing guidelines are "essential to determining the reasonableness" of the fee request. But billing guidelines were at issue in that case only because the insured-plaintiff was claiming that unreasonable rate limitations and reimbursement criteria were placed on counsel, and defendant-insurer sought plaintiff's own billing guidelines as a check on reasonableness. There is no such comparison at issue in this case.

done just that.[6] This Court itself has confirmed that billing records are sufficient for assessing and awarding attorneys' fees. *Pacquiao v. Mayweather*, No. 2:09-CV-2448-LRH-RJJ, 2012 WL 4092684, at *1 (D. Nev. Sept. 17, 2012) (awarding attorneys' fees when motion was "accompanied by a thorough breakdown of time including the individuals who provided the work, the nature of the work, and the amount of time spent on each item."); *Rubbermaid Commercial Products, LLC v. Trust Commercial Products*, No. 2:13-cv-02144, 2014 WL 4987878, at *7-8 (D. Nev. Aug. 22, 2014) *report and recommendation adopted*, 2014 WL 4987881 (D. Nev. Oct. 6, 2014) (awarding attorneys' fees).

All the cases Rimini cites to support its argument are inapplicable as they involve situations where a timekeeper lacked contemporaneous records and was attempting to reconstruct hours worked years before by looking at work product and estimating the time it would have taken to complete. *Nance v. Jewell*, No. CV 06-125-BLG-DLC, 2014 WL 948844, at *8 (D. Mont. Mar. 11, 2014), *appeal dismissed* (Aug. 13, 2014) ("plaintiffs acknowledge that their claimed hours are not based on contemporaneous recording, but are reconstructed using phone records, email records, calendars, pleadings, correspondence, expert invoices, client record" (internal quotation marks omitted)); *Lehr v. City of Sacramento*, No. 2:07-CV-01565-MCE, 2013 WL 1326546, at *8 (E.D. Cal. Apr. 2, 2013) (party claiming fees did not keep contemporaneous records of the time expended but instead based the attorneys' fee request on reconstructed records); *Ackerman v. W. Elec. Co.*, 643 F. Supp. 836, 862-63 (N.D. Cal. 1986) *aff'd*, 860 F.2d 1514 (9th Cir. 1988) (party requesting attorneys' fees did not provide all the underlying records supporting a summary of fees and costs); *G & G Closed Circuit Events, LLC v. Kim Hung Ho*, No. 11-CV-03096-LHK, 2012 WL 3043018, at *2 (N.D. Cal. July 25, 2012) (plaintiff's attorneys' billable hours were reconstructed based on a review of the case files); *Cook v. Harrison Med. Ctr.*, No. C13-5986

[6] The invoices produced were each provided to Oracle pursuant to both Morgan Lewis's (including former Bingham McCutchen) and Boies Schiller's firm policies requiring invoices to be generated for the client on a monthly basis. Hixson Decl., Exs. 3-9; Ringgenberg Decl., Exs. 3-8. Rimini's own proposed expert Mr. Ross admits that in his experience electronic attorney timekeeping systems which generate "periodic (usually monthly) invoices from the law firm to clients for services rendered" allow for "accurate contemporaneous recording of every legal service provided." Dkt. 930-3 (Ross Decl.) ¶ 9.

BHS, 2015 WL 5307626, at *2 (W.D. Wash. Sept. 9, 2015) (in a contingency fee case, counsel reconstructed his billable time); *Defenbaugh v. JBC & Associates, Inc.*, No. C-03-0651 JCS, 2004 WL 1874978, at *12 (N.D. Cal. Aug. 10, 2004) (attorney's submitted time record was reconstructed through a review of phone records and documents and the court held that the time entries were nonetheless accurate and not inflated); *Saunders v. Naval Air Rework Facility*, No. C-74-520 WHO, 1981 WL 418, at *3 (N.D. Cal. Sept. 4, 1981) (court awarded a reduced amount for attorneys who did not have records for years and had to reconstruct their time billed); *New York State Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1141 (2d Cir. 1983) (attorneys' reconstruction of time was based on "recollection of hours spent years before, in some instances as many as eight years ago"). These cases are simply irrelevant to the facts here. Oracle has submitted contemporaneous monthly invoices paid by Oracle, which include attorney time by the day down to the tenth of an hour.[7]

None of Rimini's remaining cases involves the court finding that contemporaneous time records included in attorney invoices (like the ones Oracle has produced) were insufficient to support an attorneys' fees award. *Apple, Inc. v. Samsung Elecs. Co.*, No. C 11-1846 LHK PSG, 2012 WL 5451411, at *10 (N.D. Cal. Nov. 7, 2012) (the court did not reduce the award based on a lack of contemporaneous records); *Williams v. Alioto*, 625 F.2d 845, 849 (9th Cir. 1980) (holding that the affidavits before the court were sufficiently detailed to enable the court to consider all the factors necessary in setting the fees and that no evidentiary hearing was required); *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000) (overturning district court's rejection of a fee request for abuse of discretion); *Dutchak v. Cent. States, Se. & Sw. Areas Pension Fund*, 932 F.2d 591, 597 (7th Cir. 1991) (upholding the district court's finding that submitted time entries were accurate and rejecting defendant's argument that recording time a day, a week or, even longer after the time was spent violated the contemporaneous time entry requirement).

The only case that Rimini cites that compels some discovery even close to metadata is *Ellis*

[7] Rimini also tries to claim that Mr. Hixson "opened the door" to the production of metadata by stating in his declaration that "all timekeepers track their time by the day to the nearest tenth of an hour." Mr. Hixson's statement is supported by the billing invoices Oracle produced, which show an entry for each day a timekeeper did work.

v. Toshiba Am. Info. Sys., Inc., 218 Cal. App. 4th 853, 861 (2013). In *Ellis*, a class action, the court ordered the attorney to produce billing records in native format only after the time records produced in hard copy were suspect because they indicated the solo practitioner had worked "nearly all day (sometimes as much as 16.75 hours), every day, seven days a week, including holidays, for some 22 months." *Id.* at 562. That unique fact pattern bears no relation to this case.

Rimini also argues that the invoices would be hearsay if they were not recorded contemporaneously, but again Rimini cites no applicable law to support this argument. In *Muniz v. United Parcel Serv., Inc.*, 738 F.3d 214, 222-23 (9th Cir. 2013), the court found that a paralegal's after-the-fact reconstructed hours accompanied by only the attorney's declaration was not a sufficient evidentiary basis for the award. Unlike this additional irrelevant case, Oracle did not reconstruct any of its records, and its fee request is supported by business records in the form of both firms' actual invoices sent to and paid by Oracle. Hixson Decl., Exs. 3-9; Dkt. 924 Ringgenberg Decl., Exs. 3-8.

4. Rimini's Requested Depositions Are Improper.

Rimini seeks to depose several opposing litigation counsel on questions such as firm policy on time entry and compliance with such policies. This request is doubly inappropriate. First, allowing Rimini to go down this road is exactly the type of "burdensome satellite litigation" disfavored by the courts. *Dague*, 505 U.S. at 566. Not only do courts generally disfavor depositions of opposing counsel, but several courts have held that depositions are not necessary in fee motions if sufficient written records are produced. In *Riverbank Holding Co. v. New Hampshire Ins. Co.*, No. 2:11-cv-02681-WBS-GGH, 2012 WL 4748047, at *5 (E.D. Cal. Oct. 3, 2012), the court found that it was "hard to see what more counsel for [the party seeking fees] could provide in a deposition" when the "invoices of the legal fees at issue have already been produced . . . and they include detailed descriptions of the work performed." In *Rolex Watch U.S.A., Inc. v. Crowley*, 74 F.3d 716, 722 (6th Cir. 1996), the Sixth Circuit similarly affirmed a district court's decision to deny a deposition of opposing counsel in light of adequate written records.

Rimini ignores this case law and is unable to point to a single case where the court ordered depositions of the type Rimini seeks. The one case Rimini cites to support its request is a case

where the court required a deposition of plaintiff's counsel regarding the "amount or reasonableness" of the fees plaintiff requested, *where plaintiff's counsel sought to testify at trial as an expert* on attorneys' fees. *Logistec USA, Inc. v. Daewoo Int'l Corp.*, No. 2:13-CV-27, 2015 WL 3767564, at *7 (S.D. Ga. June 17, 2015). There is no support for Rimini's demand to complicate an attorneys' fees proceeding by deposing multiple opposing counsel when the evidence Oracle has already disclosed is sufficient.

Second, "because of the negative impact that deposing a party's attorney can have on the litigation process," courts are generally reluctant to authorize attorney depositions. *Riverbank Holding Co.*, 2012 WL 4748047 at *2. A deposition of opposing counsel is warranted only if a party demonstrates that: (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the case. *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986); *see Villaflor v. Equifax Info.*, No. C-09-00329 MMC (EDL), 2010 WL 2891627, at *2 (N.D. Cal. July 22, 2010) ("Although the Ninth Circuit has not formally adopted *Shelton*, district courts have used it when analyzing whether to permit the deposition of counsel.") (quotation marks omitted).

Rimini does not come close to meeting this demanding test. As to the first criterion, the declarations and detailed monthly invoices with daily time records submitted by Oracle furnish the very information Rimini is seeking. As to the second criterion, questions about Oracle's attorneys' billing practices, strategic decisions, meetings, and communications with clients—questions that expand on the detailed time records already supplied—are protected by attorney-client privilege and work product doctrine. *See generally In re Grand Jury Witness*, 695 F.2d 359, 362 (9th Cir. 1982); *Riker v. Distillery*, No. 2:08-cv-0450 MCE JFM, 2009 WL 2486196, at *1-2 (E.D. Cal. Aug. 12, 2009). Many of Rimini's questions at a deposition would infringe upon the legal strategy and mental impressions of opposing counsel. Given that the parties—and the same litigation counsel—are involved in a second litigation also before this Court, the attorney-client privilege and work product concerns are especially significant. Finally, the depositions are by no means "crucial" to Rimini's ability to contest the reasonableness of particular time entries submitted in support of Oracle's fee motion. Rimini by its own admission intends to use the depositions of

opposing counsel to probe into the law firms' time recording policies to verify that they were recorded contemporaneously. Depositions are not crucial to Rimini's opposition when both of Oracle's law firms have already attested to the accuracy of the billing records in declarations, the records were not reconstructed, and, importantly, Oracle paid these fees. As described in section II.C above, all of the cases Rimini cites in support of its argument that it needs discovery into the details of time entry involved situations where attorneys kept no contemporaneous records of their time and attempted to reconstruct it years after the fact. By contrast, where contemporaneous records were kept, courts routinely accept those records as adequate. *See, e.g.*, *Pacquiao*, 2012 WL 4092684, at *1.

C. Oracle reserves the right to supplement its fee petition and seek reciprocal discovery if Rimini's motion is granted.

The Court should deny Rimini's request for fee discovery. However, should the Court grant any of Rimini's requests, Oracle reserves the right to seek reciprocal discovery. *See, e.g.*, *Riker v. Distillery*, No. 2:08-cv-0450 MCE JFM, 2009 WL 2486196, at *2 (E.D. Cal. Aug. 12, 2009) (requiring losing defendant to provide "an itemized statement of the number of hours billed, the parties' fee arrangement, costs and total fees paid, without including the nature of services rendered"); *Real*, 116 F.R.D. at 213 (concluding "that the hours expended by the defendant on matters pertaining to this case, counsel's hourly rates, as well as total billings and costs, are at least minimally relevant to the plaintiff's fees and costs petition"). Copies of Rimini's invoices and a full breakdown of its total costs and fees may substantially assist the Court in evaluating the reasonableness of the time and resources Oracle spent litigating this matter.

Similarly, in the event that the Court grants Rimini's requests for additional discovery, Oracle will likely seek to further supplement its fee petition to reflect the additional hours expended litigating this fee petition. In recent weeks, Rimini has continued to file multiple motions, including a "conditional cross motion" for reconsideration contingent on Oracle's requesting a new trial, which Rimini refused to withdraw even though its motion was moot according to its own terms, Dkt. 916, thus forcing Oracle to oppose the motion. Such litigation tactics have required the attention of various attorneys and paralegals. Rimini's desire to convert

this post-trial fee proceeding into an odyssey of "satellite litigation" is inappropriate for all the reasons set forth above.

III. CONCLUSION

For the foregoing reasons, Oracle respectfully submits that the Court should deny Rimini's motion for additional discovery.

DATED: December 10, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2015, I electronically transmitted the foregoing ORACLE'S OPPOSITION TO DEFENDANTS' MOTION TO COMPEL DISCOVERY RELATING TO ORACLE'S MOTION FOR ATTORNEYS' FEES to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

DATED: December 10, 2015

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